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6			

	ACTION		DIRECT REPLY		PREPARE REPLY
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	COMMENT		FILE		RETURN
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Att: DDA 76-3108

Remarks:

[redacted]

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
ADDA, 7324, x5407	

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ADDA:MJMalanick(23 Jun 76)
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STATINTL

Att: Memo dtd 21 Jun 76 to DDA fr [redacted] (OGC)
subj: Compliance with State Permit Requirements, Clean Air Act

OGC 76-3392
21 June 1976

MEMORANDUM FOR: Deputy Director for Administration

SUBJECT : Compliance with State Permit Requirements, Clean Air Act

REFERENCE : Memo for DDA, from Asst Gen Couns, subj: Compliance with Air Pollution Requirements Related to the [redacted]t Headquarters STATINTL (OGC 75-3312) dtd 8 Sept. 1975

1. Pursuant to your request, in referent this Office advised against the Agency voluntarily submitting to a Fairfax County Pollution Board public hearing for a permit for the proposed [redacted] Head- STATINTL quarters. The issue of whether Federal installations are subject to state permit regulations pursuant to the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., has been the subject of several cases. In one of these cases, Alabama v. Sceber, 502 F.2d 1238 (5th Cir, 1974), the U. S. Court of Appeals for the Fifth Circuit held that Federal facilities were not exempt from state permit requirements. The U. S. Court of Appeals for the Sixth Circuit in Commonwealth of Kentucky ex rel. Hancock v. Ruckelshaus, 497 F.2d 1172 (6th Cir, 1974) decided just the opposite. The U. S. District Court for the Central District of California agreed with the Sixth Circuit. People of State of California v. Stastny, 382 F. Supp. 222 (C.D. Calif., 1972).

2. Last week the Supreme Court settled this difference of opinion in Hancock v. Train, 44 U.S.L.W. 4767 (U.S. June 7, 1976). Therein the Court affirmed the opinion of the Sixth Circuit. The Court stated that "There is no longer any question whether federal installations must comply with established air pollution control and abatement measures" 44 U.S.L.W. 4769; however, it disagreed with the Fifth Circuit position that operation of Federal installations is conditioned on securing a state permit. It disagreed because the Court was "not convinced that Congress intended to subject federal agencies to state permits." 44 U.S.L.W. 4771. Such being the case, the general principle, derived from the Supremacy Clause of the Constitution, citing Mayo v. United States, 319 U.S. 441, 445 (1943), is "That the activities of the Federal Government are free from regulation by any state." 44 U.S.L.W. 4771.

3. A copy of the Supreme Court opinion is attached for review of those of your officers responsible for matters relating thereto. In addition there is attached a related opinion, Environmental Protection Agency v. California ex rel. State Water Resources Control Board, 44 U.S.L.W. 4781 (U.S. June 7, 1976), relating to the Federal Water Pollution Control Act Amendments and the lack of necessity for Federal installations to obtain state permits relating thereto. Of importance here is that the position we took in referent now has the authority of no less than the Supreme Court.

[redacted] STATINTL

Assistant General Counsel

Atts

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